

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MURPHY, Regional Director of Region 3 of the
National Labor Relations Board, for and on behalf of the
NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CAYUGA MEDICAL CENTER,

Respondent.

**DECLARATION OF
RAYMOND J.
PASCUCCI**

Civil Action No.:
3:17-MC-00004
(TJM)(ATB)

STATE OF NEW YORK)
) ss.:
COUNTY OF TOMPKINS)

I, Raymond J. Pascucci, declare, upon personal knowledge and under penalty of perjury that the following is true and correct:

1. I represent Respondent, Cayuga Medical Center (“CMC” or “Respondent”), in the above-referenced matter. I make this declaration in support of Respondent’s Opposition to Region Three’s Petition for Injunctive Relief Under Section 10(j); and Respondent’s Answers/Responses in Opposition to Region Three’s Motions to Shorten Time and for an Expedited Hearing and to Determine the Section 10(j) Petition on the Basis of the Administrative Record and Exhibits, as Supplemented by Affidavits.

2. An administrative hearing in this matter is ongoing. Testimony was taken on January 9-12 and it resumed this Monday, February 27. It is scheduled to continue for the entire week plus the following week through its completion. Should any additional days be needed, the ALJ has set aside the week of April 3, 2017 to complete the hearing. Thus, the administrative record will be complete in the near future.

3. As set forth in Petitioner's Opposition to the Petition for Injunction and Supporting Declarations, Region Three has not established grounds for Section 10(j) injunctive relief.

4. Region Three fails to submit any evidence to support its contention that reasonable cause exists to believe an unfair labor practice has occurred and therefore no injunction can be issued.

5. Region Three also cannot establish that injunctive relief is just and proper. As set forth in Petitioner's opposition, reinstating the two employees' to employment would be directly contrary to the public interest.

6. In this case, Ms. Marshall and Ms. Lamb (1) knowingly and deliberately violated policy and committed a fundamental breach of patient safety that placed the patient in danger of a potential lethal outcome; (2) caused the vulnerable patient fear and distress because she was aware of the nurses' disregard of the necessary safety precautions; and (3) falsified the Blood Transfusion Card by certifying that the proper two-nurse bedside verification had been performed.

7. The irreparable harm and potential danger that could be caused by reinstating these two nurses pending the completion of the administrative proceedings before the NLRB far outweighs any alleged minor impact on union activity that had been in decline far before Ms. Marshall and Ms. Lamb were terminated.

8. No injunctive relief should be granted and to the extent this Court considers granting injunctive relief, no relief should be considered until the administrative record is complete and both sides have had the opportunity to address the administrative record through briefs.

9. Region Three attaches an Administrative Law Judge decision that was issued on October 28, 2016 by David I. Goldman, that involved one of the terminated nurses, Anne Marshall, and was based on alleged unfair labor practices occurring back in Summer and Fall of 2015. See Memorandum of Points and Authorities in Support of Petition for Injunctive Relief, Ex. I. This decision is a recommended order that has not been adopted by the National Labor Relations Board. The Respondent has filed exceptions to the Administrative Law Judge's Recommended Order (i.e., an appeal) which are currently pending before the National Labor Relations Board. The Administrative Law Judge's decision is not final.

Dated: March 3, 2017

/s/
Raymond J. Pascucci